



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080007

Petitioners, Ronenn Roubenoff and Barri S. Falk, applied to the Building Commissioner for a permit to construct an attached three-car garage and mudroom addition with a garden terrace above the garage, to relocate the current circular driveway in front of their property and to construct exterior stairs at their home at 34 Welch Road. The application was denied and an appeal was taken to this Board.

On February 28, 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed June 5, 2008, at 7:30 p.m., on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the attorney (if any, of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on May 15 and 22, 2008 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **RONENN ROUBENOFF & BARRI S. FALK**

Location of Premises: **34 WELCH ROAD BRKL**

Date of Hearing: **06/05/2008**

Time of Hearing: **7:30 p.m.**

Place of Hearing: **Main Library, 2nd floor**

A public hearing will be held for a variance and/or special permit from

- 1) **5.09.2. j; Design Review, Special Permit Required.**
- 2) **5.20; Floor Area Ratio; Variance Required.**
- 3) **5.22.3. c; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units. Special Permit Required.**
- 4) **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 5) **5.70; Rear Yard Requirements; Variance Required.**
- 6) **5.74; Fences and Terraces in Rear Yards; Variance Required.**
- 7) **For the Design of All Off-Street Parking Facilities**
 - 6.04.5. c. 1; Variance Required.**
 - 6.04.9. b; Variance Required.**
 - 6.04.14; Variance Required.**
 - 6.04.14; Planning Board Determination and Modification Required.**
- 8) **8.02.2; Alteration or Extension; Special Permit Required**

Of the Zoning By-Law to construct a garage and mudroom addition with a roof terrace/garden above the garage; to relocate the driveway; to construct exterior stair

at **34 WELCH ROAD BRKL.**

Said Premise located in an **S-25** zoning district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Enid Starr
Jesse Geller
Robert De Vries**

At the time and place specified in the notice a public hearing was held by this Board.

Present at the hearing were the Chair, Jesse Geller, and Board members Robert DeVries and Jonathan Book. The Chair asked if the petitioners waived the reading of the notice. Petitioners, also present, agreed to waive a reading of the notice. The Chair outlined the order of procedure to be followed related to the presentation and Board discussion of the application.

The petitioners' architect, David L. Amory, of Amory Architect, PC, of 58 Winter Street, Boston, introduced himself, Andrew Magee, the petitioners' landscape architect, the petitioners' attorney, Roger R. Lipson and T.J. Hrabota, an architect employed by Amory Architect, PC. Mr. Amory explained that there were four plans in the Planning Board packet that the Board of Appeals received which were labeled Concepts I through IV. He pointed out to the Board that he would focus his presentation on Concepts I and IV, Concept I having been the plan recommended by the Planning Board in their report. Mr. Amory described the petitioners' preference for Concept IV which was an attached three-car garage and driveway on the south side of the dwelling which was built in 1904. The flat-roofed garage would be attached to the dwelling's side wall and have a driveway that is 20 feet wide at the street line, expanding to approximately 31 feet at the garage's front façade. Primary egress from the garage would lead to the first floor of the dwelling by way of a glass canopied stairway and a new enclosed porch addition that would serve as a mudroom. A rear exterior stair would provide access to the garage's roof which would serve as a garden and terrace space. An egress from the garage would also be provided directly into the dwelling's basement which is unfinished. The garage's exterior would be finished in stucco and stone veneer to match the main house's exterior finish. Mr. Amory explained that the owners presently park three cars in front of their house in a circular driveway facing the narrow street. The construction of a three-car garage would eliminate the unsightliness of that by removing the

cars from public view. Mr. Amory explained that the petitioners preferred the attached three-car garage plan because it would remove the least amount of landscaping, be less costly than the other plans to construct the driveway and still leave enough usable land for open space.

Mr. Amory next introduced Andrew Magee, the landscape architect, of 10 Hanover Street, Norfolk, Massachusetts. Mr. Magee presented the landscaping plans to the Board. He stressed to the Board that the main idea was to minimize the garage and its impact on the landscape. The objective was to limit the change in appearance so that there would not be such a dramatic shift in the overall rural look of the street. He stated that two trees, one of which was unhealthy anyway, would have to be removed for the construction of the driveway but that the addition of new landscaping would maintain the same feel of the street as before. He pointed out that the circular area in front of the house used for parking would be landscaped and the existing curb cuts removed, a significant improvement over the current unsightly view of three parked cars. Mr. Magee stated that much of the lot consisted of ledge which would have to be dug out in order to construct the garage which would be set into the slope of the hill with much of it being below grade. There would also be a retaining wall at the rear of the garage where the lot drops sharply down toward Warren Street. As one is driving up the hill, the attempt is to have heavy planting to minimize the view of the retaining walls on either side of the driveway as well as the impact of the new structure and the driveway itself. He pointed out that much of the addition incorporates the footprint of the existing porch which should integrate well with the main house. Mr. Magee noted that although the construction of the garage would require removal of some existing landscaping, the addition of a roof garden on top of the garage would add back some attractive landscaping. In regard to drainage requirements, Mr. Magee noted that a trench drain will be installed at the entry to the garage and that storm water would be collected from the driveway in the trench drain, pumped to a "high point" on the property and drain "to daylight" without

adversely affecting adjacent properties. He noted that the plans call for the removal of an existing greenhouse on the property, the foundation of which will be retained and used as a landscape garden feature as well as a drywell. An effort is being made to direct storm water away from the municipal storm water system.

Mr. Amory asked the Board if they had any questions up to this point.

Board member Robert DeVries wanted to know why the petitioners had eliminated the roof trellis which was in the original plan. The petitioner, Barri S. Falk, replied that the neighbor, an architect who owns 25 Welch Road, appeared at the Planning Board hearing and objected to the trellis so they accommodated his request and deleted it from the plan. Mr. DeVries then inquired about the amount of ledge that exists on the property and how that would affect the drainage. Mr. Magee replied that he had probed the soil and some areas had 18 inches of soil before hitting ledge and in other places he had struck ledge immediately. He added that he was planning to add drain rock to the greenhouse area where he was planning a dry well and he expected that this would hold a considerable amount of water. Mr. Magee also mentioned that the driveway would be heated and that the melted snow and ice would flow into the driveway channel. Mr. DeVries next addressed the question of the additional retaining wall to the southwest side of the property. He wanted to know how high the additional wall would be. Mr. Magee replied about 177 feet in one spot and 172 feet in another spot. Mr. DeVries wanted to know what the wall would look like. He noted that the plan showed a concrete block wall and that such a wall would not be friendly to the neighborhood. Both Ms. Falk and Mr. Magee agreed that a stone wall would be more appropriate.

Michael Shepard, the Building Commissioner, asked if there was a back-up generator system to pump out the storm water and the melted snow from the heated driveway. The petitioners replied that they have a back-up generator but it was not hooked up.

The Chair suggested that the Board discuss Concept I, the attached two-car garage with an outdoor parking space adjacent to the garage on the south side because this plan was the one approved by a majority of the Planning Board.

Mr. DeVries wanted to know why a majority of the Planning Board preferred an attached two-car garage with an adjacent outdoor space as opposed to an attached three-car garage. In the interests of full disclosure, Mr. DeVries stated that he was opposed to the proposed 40% or 24 foot amendment when it came before Town Meeting. He wanted to know why the abutter opposed the attached three-car garage plan. Mr. DeVries stated that his preference at this point was for Concept IV, the attached three-car garage but he still wanted to know why the Planning Board recommended Concept I.

Mike Shepard, the Building Commissioner, responded to Mr. DeVries. Mr. Shepard was at the second Planning Board hearing. He believed that the Planning Board voted in favor of the attached two-car garage with an adjacent outdoor space because the neighbor directly across the street from the petitioners' house, who is an architect, and who had objected to the attached three-car garage at the first Planning Board hearing because it obstructed his view from his living room window, advised the Board that the attached two-car garage with an adjacent outdoor parking space was less offensive to him than the attached three-car garage plan. Mr. Shepard believed that the Planning Board approved the attached two-car garage plan and the outdoor space because it removed a portion of the structure which was the main objection of the neighbor.

The petitioners' attorney responded to the question of whether Section 6.04.14 applied to the attached two-car garage with an adjacent outdoor space since the proposed two-car garage was 24 feet in width. Mr. Lipson replied that it was his opinion, as well as that of the Planning Board, that the zoning amendment applied because the third car was parked in an outdoor space which

faced the street and was included in the language "or within 45 degrees of parallel to a way may be devoted to parking ... including garage or drive-through space."

Mr. Amory showed the Board the plans for Concept I and stated that this concept was essentially the same as the three-car garage and situated in the same arrangement. The driveway construction is the same as well as the curb cut.

Mr. Magee addressed the Board in regard to the landscaping plan for the attached two-car garage plan and explained the similarities in the construction of the driveway, the retaining wall and the drainage. The only significant difference is that the attached three-car garage has no front stairs off to the side of the garage which the attached two-car garage has.

The petitioners' attorney, Roger R. Lipson, of 7 Harvard Street, Brookline, addressed the Board on the question of whether either of the proposed plans, the attached three-car garage, Concept IV, or the attached two-car garage with an adjacent outdoor space, Concept I, required the granting of a variance under Section 6.04.14 of the Zoning By-Laws which provides that no more than 40% of the width of the façade facing the street, or 24 feet, whichever is less, which is devoted to parking or other vehicular use, whether a garage or outdoor parking, is allowed. Mr. Lipson stated that there were three main reasons why the petitioners' plans met the conditions for the granting of a variance. First, he claimed, that the parent lot originally was improved by an accessory three-car carriage house which ended up on a separate parcel across the street after Welch Road was built bifurcating the property and leaving 34 Welch Road without a garage. Mr. Lipson stated that the addition of a three-car garage to the house was, in fact, a historical restoration of the original facility that no longer existed. Secondly, he pointed out the legislative intent in adopting Section 6.04.14 as an amendment to the Zoning By-Laws at the May 23, 2006 Annual Town Meeting. He quoted excerpts from the Reports to Town Meeting of the Moderator's Committee on Zoning, the Planning Board, the Board of Selectmen and the Advisory Committee.

Each of these Reports centered on so-called "snout-nosed" buildings in which the garage constituted a substantial portion of the façade. Moreover, the Reports stressed that the amendment was directed at "new" or "future" housing construction and not on existing houses. Thirdly, Mr. Lipson argued that the petitioners' plans qualified for a variance under the provisions of Massachusetts General Laws Chapter 40A, Section 10, which sets forth the conditions supporting the granting of a variance. Mr. Lipson pointed out the unique characteristics of the lot on which 34 Welch Road was situated. He noted that the soil conditions consisted mainly of ledge and that one could see clearly from below on Warren Street looking up at the house that it is situated on top of a ledge hill and that other properties on Welch Road were not similarly situated. In addition, the bifurcation of the original lot resulted in the creation of an oddly shaped lot that resembled a pork chop and on which it was virtually impossible to construct a garage of any kind without destroying a large portion of the landscape. Mr. Lipson pointed out to the Board that Section 6.04.14 specifically excluded a detached garage from its application but left open the absurd possibility that a detached garage of substantial proportions could be constructed without the necessity of obtaining a variance under the same section that prohibited an attached garage that might be of lesser dimensions but that was prohibited because it would be in violation of the 40% or 24 foot rule. The unique shape of the lot also prevented the construction of a detached garage because its construction would remove a large portion of the landscaping and render the available recreational space unusable. This is why the petitioners chose not to go with Concept III. Finally, Mr. Lipson stressed the unique topography of the lot on which 34 Welch Road was situated. He pointed out that the rear lot line dropped off so sharply toward Warren Street that it was impossible to construct an attached three-car garage that would be at a 90% angle and not facing the street. This was the reason why the petitioners were not able to choose Concept II.

The Chair asked counsel if he wished to address the issue of FAR and Design Review. Mr. Lipson pointed out that the issues of Design Review, FAR , Exceptions to Maximum FAR Regulations and Setbacks were adequately dealt with in the Planning Board Report whose conclusions he concurred with in regard to the issuance of special permits.

Petitioner Barri S. Falk then addressed the Board. She referred to neighborhood support for the proposed attached three-car garage and noted the two letters of support in the Planning Board packet from the owners of 58 Welch Road and 39 Welch Road who did not have time to attend the hearing. Ms. Falk mentioned that they sent copies of the attached three-car garage plan to all of their neighbors and that no-one called them back. Three neighbors did not respond one way or another to the proposed plan. She pointed out to the Board that with the exception of their house and the house next door, every house on Welch Road has either a two-car garage or a three-car garage. She noted that a neighbor across the street at 39 Welch Road has a three-car garage. She next addressed the objections from the owner of 25 Welch Road, her neighbor directly across the street from her house. Ms. Falk stated that her neighbor claimed that the design of the proposed attached three-car garage blocked the neighbor's view of the landscape. She added that after hearing that objection, her husband went out to see whether this was true and took a picture at the height of the neighbor's living room window and determined that the neighbor could not see the structure. She also noted that although the neighbor attended both Planning Board hearings, he was not at the Board of Appeals hearing. After the first hearing before the Planning Board, she said that the petitioners agreed to remove the trellis on top of the garage as a concession in response to the neighbor's objections because it would permit a better view. The neighbor also requested that they lighten the railing because he thought it was too dark. They agreed to this request as well. The petitioner also stated that they had carefully considered their neighbor's objection to the location of the proposed curb cut but, after examination, rejected the idea because

a relocation to the north would result in a steeper driveway, be more costly and remove more open space. Ms. Falk concluded that her neighbor would prefer that they not build a garage in that location at all but, after careful review of different sites for the garage, the one they have chosen is the only one that makes any sense.

The Chair asked if there were any persons who wished to speak in favor of the petitioners' proposal. There being none, the Chair then asked if there were any members of the public who wished to speak in opposition to the petitioners' proposal. There were none.

The Chair then asked for a report and recommendation from the Brookline Planning Board. Michael Shepard, Building Commissioner, delivered the findings of the Planning Department.

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is requested pursuant to Section 5.22 (*Exceptions to Maximum Floor Area Ratio Regulations*) requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). The applicant has provided a Community and Environmental Impact Statement. The most relevant sections of the design review standards, as they relate to the applicant's original design, are described below:

- *Preservation of Trees and Landscape:* Two trees will need to be removed to install the driveway, and a considerable amount of land will need to be excavated in order to construct the garage at the basement level. The applicants indicate one of the trees is unhealthy and would need to be removed anyway. The rear yard of the lot is heavily wooded, and the applicants are planning to use the roof of the garage as garden area, as well as landscape the area previously used as a driveway.
- *Relation of Buildings to Environment:* The new garage is set into the slope of the hill, so much of the structure will be below grade. The garage is set back slightly from the dwelling's main front façade. The proposed addition is minor and uses the footprint of an existing porch, so it should integrate well with the main building.
- *Open Space:* The proposed driveway will require the removal of landscaped open space, but the top of the garage will serve as a roof garden and the existing driveway area will be landscaped. Much of the site currently does not meet usable open space requirements because of the existing slope, and this proposal will bring the site into compliance with those requirements.
- *Circulation:* The proposed driveway's width is wide enough for three vehicles to enter and exit. The applicants are proposing to remove the existing driveway and parking area directly in front of the dwelling's main entrance, as well as the driveway leading to the greenhouse.
- *Drainage:* The applicants maintain that storm water will be collected from the driveway and drained "to daylight" in a manner that will not adversely affect neighboring properties.
- *Heritage:* The site is in the Town Green National Historic District, and the plans indicate the

removal of a greenhouse structure. The applicant will need to obtain a demolition permit from the Preservation Commission prior to removal of the greenhouse. The foundation of the greenhouse will be retained and used as a landscape garden feature and drywell.

Section 5.20 – Floor Area Ratio

Section 5.22.3.c – Exceptions to Maximum Floor Area Ratio (FAR) Regulations: Special permit required (see table on following page).

FLOOR AREA

	Required	Existing	Proposed	Finding
Floor Area Ratio	0.20 100%	0.235 118%	0.247 124%	<u>Special permit*</u>
Floor Area	5,602 s.f.	6,592 s.f.	6,925 s.f.	

*Under Section 5.22.3.c, the Board of Appeals may allow by special permit an increase in floor area of 350 square feet or less, provided the resultant floor area does not exceed 150% of the permitted gross floor area.

Section 5.70 – Rear Yard Requirements

Section 5.74 – Fences and Terraces in Rear Yards

Section 6.04 – Design of All Off-Street Parking Facilities

6.04.5.c.1 – Front yard setback: The garage and driveway complies with front yard setback requirements as long as all vehicles are parked in the garage.

6.04.9.b – The area of the lot not landscaped and so maintained, including driveways, shall be graded, surfaced with asphalt or other suitable material, and drained to the satisfaction of the Building Commissioner, to the extent necessary to prevent nuisance of dust, erosion, or excessive water flow across public ways. The applicant has indicated the driveway will consist of pavers and be heated when needed. A new trench drain with a grate will be installed at the garage's entrance and drain to a drywell.

6.04.14 – No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to parking or other vehicular use, including garage or drive-through space... The Planning Board may allow the foregoing limitation to be exceeded upon reports from the Commissioner of Public Works and the Director of Transportation that modification of the limitation is necessary for safe vehicular use and the determination of the Planning Board that no other feasible design would permit safe vehicular use while reducing the visual and other impact of such use. In addition to complying with the other provisions of this by-law, ...the surfaced area of parking and entrance and exit drives shall not exceed the width allowable pursuant to this section, and all remaining space between the building and the street shall be landscaped open space. The width of this garage is approximately 36 feet, and the driveway's width is approximately 31 feet. *Variance or Planning Board Determination required.*

GARAGE

	Required	Existing	Proposed	Finding
Front Yard Setback	30 feet	n/a	30.1 feet	<u>Complies</u>
Rear Yard Setback	50 feet	n/a	14.3 feet	<u>Special Permit**</u>
Width Facing Public Way	24 feet (max)	n/a	36 feet	<u>Variance / PB Determination</u>

****Under Section 5.43, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for setback requirements if counterbalancing amenities are provided.**

Mr. Shepard said that the majority of the Planning Board was not opposed to the proposal to construct a garage and rear addition for this single-family dwelling, as long as the garage is limited to two vehicle bays as presented in Concept I. The garage has been designed to have a minimal impact on surrounding properties, and much of the property will be well landscaped. Although the proposed arrangement of a two-car garage and an additional open-air parking space will still result in a parking area in excess of what is allowed under *Section 6.04.14*, the garage is set back from the road and the dwelling will not have a majority of its façade devoted to parking, the prevention of which was the primary reason why the regulation was initially adopted. The proposed garage will relocate the dwelling's parking from the front yard, and the proposed rear addition will not be especially visible and will add only a minimal amount of square footage to the building. The overall project is attractively designed and should integrate well with the existing building. A majority of the Board felt the two-car garage proposal, Concept I, was preferable to the original three-car garage submission because it is less intrusive and will have a lesser impact on the streetscape. The dissenting Board member was not opposed to the general proposal, but instead was in favor of the original three-car design shown in Concept IV. Therefore, should the Board of Appeals determine the proposal meets the requirements for a variance, the Planning Board voted (3-1) to recommend approval of the proposed garage and rear addition illustrated in Concept I, subject to the following conditions:

1. **Prior to issuance of a building permit, final plans and elevations of the garage and addition, indicating materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for**

Regulatory Planning for review and approval. Counterbalancing amenities shall endeavor to minimize the impact of the new garage on affected abutters.

- 3. Prior to issuance of a building permit for the demolition of the greenhouse, all needed approvals from the Preservation Commission or their staff shall be obtained.**
- 4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered architect or land surveyor; 2) final elevations of the garage and rear addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair then called upon Michael Shepard, Building Commissioner, to deliver the Building Department comments. The Building Department originally denied the application based on a literal reading of Section 6.04.14. Mr. Shepard stated that the same reasons that warranted the Planning Board's approval of the attached two-car garage with an outside space also applied to the attached three-car garage proposal. Mr. Shepard pointed out that if the attached two-car garage with an outdoor space proposal met the conditions for the granting of a variance, the attached three-car garage did so as well. He concluded that the attached three-car garage proposal was the better plan subject to whether the Board of Appeals approves the issuance of a variance.

The Chair declared the public discussion portion of the meeting as having been concluded.

The members of the Board then discussed the merits of the application. The Chair stated at the outset of the discussion that there was unanimity of opinion that Section 6.04.14 is horribly drafted. The Chair admitted that the Board has struggled to try and determine what the zoning amendment was attempting to accomplish.

Jonathan Book stated that, in his opinion, the attached three-car garage design is the superior plan. He admitted, however, that he is struggling with whether or not the proposal meets the conditions for the granting of a variance. Mr. Book inquired about the nature of the soil

conditions of the property and whether the presence of a large amount of ledge would prohibit consideration of other proposals such as Concept II, an attached three-car garage rotated 90 degrees clockwise from the original proposal so that the vehicle bays face south and Concept III, a detached three-car garage. Mr. Amory replied that Concept II would result in a longer and more expensive driveway and would remove a much of the landscaping while Concept III would have to be constructed behind the entire façade facing the way of the main house and would also cut the yard in half. Furthermore, a detached garage would block more of the landscape view than either of the other plans that have been presented. He explained that such construction would not be feasible as it would be on the rear edge of the lot which drops steeply down to Warren Street.

The Chair inquired as to whether other lots on Welch Road had the same characteristics as the petitioners' property. Mr. Lipson replied that the petitioners' lot had significantly more ledge than the other properties, was a triangularly shaped lot due to the bifurcation of the original lot when Welch Road was built and the fact that the lot dropped off precipitously at the rear of the building toward Warren Street were all conditions unique to the Petitioners' lot. He pointed out that there was not much room for the construction of a detached garage and construction would be very expensive.

Mr. DeVries stated that the attached three-car garage proposal was a better design than the two-car garage plan and that he was in favor of Concept IV. He firmly believed that the petitioners' lot contained sufficient peculiarities to justify the granting of a variance. He agreed with the conditions as proposed by the Planning Board, but wanted them to include approval of the retaining wall, including the materials to be used for the retaining wall. He also believed that the removal of the circular driveway in front of the house was an improvement in the quality of the landscaping.

The Chair agreed that the attached three-car garage was the best plan. The Chair next discussed the three reasons presented by petitioners' counsel for the granting of a variance. While the Board appreciated the historical background of the previous three-car garage and the bifurcation of the lot when Welch Road was built, that situation existed at a time when the lot was much larger as opposed to the current application based on a smaller lot. The second reason, based upon the legislative history of the zoning amendment, while interesting, does not change the final language approved by Town Meeting which is what the Board has to apply to the facts.

The Board then deliberated whether the conditions necessary for the granting of the special permits requested have been met.

The Chair next discussed the question of whether the attached three-car garage proposal satisfied the requirements for the granting of a variance under Massachusetts General Laws Chapter 40A, Section 10 from application of the requirements of Section 6.04.14. Before continuing on, the Chair wanted to make it clear that the Board of Appeals does not take the recommendation of the Planning Board lightly and that they generally defer to the Planning Board's recommendations. That having been said, the Chair expressed the unanimous preference of the Board for the attached three-car garage proposal as opposed to the Planning Board's recommendation for approval of the attached two-car garage with an adjacent outdoor space. The Chair stated that the bar for meeting the requirements for a variance is set very high. Jonathan Book asked if the additional floor area was within the allowed 350 square feet under Section 5.22.3.c. Mr. Shepard replied that the increase in gross floor area was 333 square feet and was an increase of 124% which is within the 150% maximum allowed for the issuance of a special permit.

As applied to the petitioners' proposal, the Board concludes that the conditions required for a variance under Massachusetts General Laws Chapter 40A, Section 10 had been met based upon the following reasons: (i) owing to circumstances relating to the soil conditions, shape and

topography of the property and affecting this land but not affecting generally the zoning district in which the property is located and, and more specifically: the property has an unusual triangular shape which resulted from the original lot having been bifurcated by the creation of Welch Road; the unique shape restricts the location where the proposed three-car garage can be located; no other property on the street has a similar shape; the property's soil conditions are also unique as the lot consists of a substantial amount of ledge which also limits where and to what extent the proposed garage can be built; the other lots on the street are not as adversely affected by ledge as much as 34 Welch Road; and finally, the lot's topography is similarly unique as the lot drops off sharply just to the immediate rear of the building towards Warren Street thus limiting the feasibility of the other proposals; (ii) a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise to the petitioner, and (iii) desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

The Board, having deliberated on the merits of the application and having considered the foregoing testimony, conclude that the Petitioners have satisfied the conditions for the granting of special permits under the following sections of the Zoning By-Law: Section 9.05, Section 5.09.2.j (Design Review), Section 5.22.3.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units), Section 5.43 (Exceptions to Yard and Setback Regulations), and Section 8.02.2 (Alteration or Extension). With respect to Section 5.09.2.j, the Chair believes it will be necessary to amend the conditions related to the installation and approval of a proper drainage system. Therefore, the Board makes the following findings pursuant to Section 9.05.1:

- a. The specific site is an appropriate location for such a use, structure or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

The Board votes unanimously to grant approval for the issuance of special permits as noted above and a variance as provided above in connection with the Zoning By-Law Sections for which relief is sought by the Petitioners as provided herein and as related to the attached three-car garage plan described as Concept IV subject to the following conditions:

1. Prior to issuance of a building permit, final plans and elevations of the garage and addition, retaining wall, adequate drainage, indicating materials, shall be submitted to the Assistant Director for Regulatory Planning and the Town Engineer (for drainage only) for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan, which shall not include a trellis on the garage roof, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. Counterbalancing amenities shall endeavor to minimize the impact of the new garage on affected abutters.
3. Prior to issuance of a building permit for the demolition of the greenhouse, all needed approvals from the Preservation Commission or their staff shall be obtained.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered architect or land surveyor; 2) final elevations of the garage and rear addition, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

08 JUL -3 PM 12:24

Unanimous Decision
of the Board of Appeals

Date of Filing: July 3, 2008

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geller, Chair